

people of Marin County well in this capacity, and earned a reputation for being one of the most exemplary teachers in her field.

Kate Byrnes has devoted countless hours to her students and demonstrates an uncommon commitment to her educational mission. Time and time again she has intervened on behalf of her students and their families. In addition, she has coordinated overnight ski trips for the blind and visually impaired in order to increase their recreational opportunities.

Kate Byrnes has been active in organizations, including the Low Incidence Regional Network for Northern California and the shared decision-making Leadership Team of teachers and administrators for the Marin County Office of Education's special education division. She has been an instructor and guest lecturer at San Francisco State University, helping to motivate others to become exceptional teachers for the visually impaired.

Mr. Speaker, it is my great pleasure to pay tribute to Kate Byrnes for being selected as the 1995 California Teacher of the Year. Marin County owes a great deal of gratitude for the tireless efforts of Kate Byrnes over the years. I extend my hearty congratulations and best wishes to Kate.

MACK GERALD FLEMING

**HON. G.V. (SONNY) MONTGOMERY**

OF MISSISSIPPI

IN THE HOUSE OF REPRESENTATIVES

*Thursday, April 6, 1995*

Mr. MONTGOMERY. Mr. Speaker, Friday, March 31, 1995, marked the end of an extraordinary career in public service. After 26 years on Capitol Hill, serving 21 years as chief counsel and 14 as staff director of the Committee on Veterans' Affairs, Mack Gerald Fleming retired.

Superlatives just naturally come to mind when describing Mack. As stated in the resolution presented to Mack by BOB STUMP and me, his service with the committee and the Veterans Administration was distinguished by visionary leadership, profound wisdom, sound political judgment, and a passion for meeting the needs of America's veterans.

His was the deep commitment of the true believer tempered by a unique practical sense of political possibilities and opportunities. His intuitive sense of timing and ability to reach an effective compromise resulted in the enactment of far-reaching veterans' legislation. Under his guidance, the measure elevating the Veterans' Administration to the Department of Veterans' Affairs was signed into law. Additionally, the new GI bill, which profoundly improved the ability of the Armed Forces to recruit smart, capable young men and women, was nurtured into reality by Mack Fleming. I think Mack would also say he is particularly proud of his efforts to provide an entitlement to inpatient health care for service connected and low-income veterans.

We all know Mack thrived in and was energized by the rough and tumble of politics, and he loved nothing better than a good fight on behalf of a cause he championed. He nevertheless was not swallowed up or overwhelmed by the sometimes heady Capitol Hill existence. There was something in his background or the way he was raised that kept him solidly grounded, and that made the difference:

The difference between a boastful person and one whom people boast of knowing;

The difference between a cynical man and one who only sees the good he can do for other people;

The difference between a man who looks for credit for his accomplishments and a man who accomplishes much.

Mack Fleming is a person who is still filled with wonder and seeks to learn new things every day. He has the quintessentially American outlook first observed by de Tocqueville that although man is not perfect, with a decent amount of effort, he can be improved.

Mack came from a humble background in Georgia and South Carolina. He graduated from Clemson University in 1956 and was commissioned as an officer in the U.S. Army. He served on active duty for 2 years with the Second Armored Division in Europe. He subsequently returned to South Carolina where he was a supervisor in a textile mill for 2 years. After coming to Washington in 1960 to serve as administrative assistant to William Jennings Bryan Dorn, Mack graduated from the Washington College of Law at American University in 1966.

Mack also met his wife Libby in Washington, whom he married in 1963. He has been a devoted husband and a supportive and proud father of their children, Katie (Katharine) and John. Mack has long been an active member of the Capitol Hill United Methodist Church and regularly serves as a volunteer at the soup kitchen sponsored by his church.

Mack Fleming loved his work. He was as loyal as they come—smart, tough, a savvy politician. He particularly admired Speaker Sam Rayburn and Presidents Abraham Lincoln and Lyndon Johnson—and one could see Mack's respect for these practical politicians reflected in his strong character and deep sense of personal honor. Now, I don't want anyone to get the idea that Mack was a saint. He was occasionally more passionate than logical, and serene is not a word I associate with Mack, but he never retreated from the consequences of his conviction.

Mack brought old-fashioned values with him when he arrived in Washington 35 years ago. Through his influence and powers of persuasion, those values are integral markers for much of the work carried out by the committee and its staff. I often said he was the best, and we will certainly miss him.

“TAKING” IT TOO FAR

**HON. GEORGE MILLER**

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Thursday, April 6, 1995*

Mr. MILLER of California. Mr. Speaker, and fellow Members, I bring to your attention the attached article by Charles McCoy, from the April 4, 1995, edition of the Wall Street Journal.

Mr. McCoy presents an even-handed report of the congressional debate on the issue of private property rights and the “takings” issue, which, after passing the House, is now underway in the Senate. As Mr. McCoy notes, the House bill would require the Government to pay landowners full compensation when certain environmental protection actions trim the value of any portion of their land by 20 per-

cent or more. In the Senate, majority leader BOB DOLE has introduced a measure (S. 605) that would lift the threshold to 33 percent and would apply to all Federal actions.

Proponents contend that the Republican bills aim merely to put common sense back in Government's attitude about private property. Perhaps these advocates can explain the logic behind these examples of litigation currently being fought under the guise of private property rights:

Summitville Mine. The Canadian company that operated Summitville Mine created a Superfund site that will cost the taxpayers about \$120 million to clean up, filed bankruptcy and left the country. Now the owners of the mine site are suing the Governor of Colorado on the grounds that because the State permitted the mine, that gave the owners significant profit but also polluted their property, the value of the land was decreased due to regulatory action.

California Central Valley [CVP]: Big agricultural corporations now receive huge amounts of public water at subsidized rates to pour on their crops. Under the CVP legislation enacted in 1992, Federal and State regulators intend to divert some of that water to save and restore salmon runs. Now, the agriculture bigwigs are claiming that if these plans go through, and the takings legislation is enacted, they will claim reimbursement for any diversion of their subsidized water allotments—at market rates—not the subsidized rates.

The argument for “takings” legislation is not simply about that bedrock of American values: protection of private property. Unfortunately for those citizens who honestly believe in the rightness of their cause, it is more a ruse being played on the American people by the proposal's strongest supporters: industries such as mining, ranching, timber, oil and gas, and agriculture. These corporate players and their lawyers know that if enacted, this bill will not bring common sense to governmental actions, but will flagrantly inflate the number of lawsuits crowding our courts and cause governmental gridlock at all levels.

I urge you to take the time to read Mr. McCoy's article.

[From the Wall Street Journal, Apr. 4, 1995]

THE PUSH TO EXPAND PROPERTY RIGHTS STIRS BOTH HOPES AND FEARS—SOME CALIFORNIA FARMERS SEE WINDFALL IN GOP BILLS; OFFICIALS FRET ABOUT COSTS

DO GRAZING ELK “TAKE” GRASS?

(By Charles McCoy)

The new Republican-controlled Congress is on its way to passing the biggest expansion of property rights in U.S. history. In California, this could very well radically drive up the cost of saving salmon—and add to the tide of litigation those rescue efforts have already spawned.

Indeed, the Republican proposals, depending on their final form, promise a procession of policy zigzags and lawsuits at all levels of government, both critics and even some proponents agree.

MURKY CONSEQUENCES

Consider the salmon example: Big agricultural corporations in California's arid Central Valley now get huge amounts of public water at subsidized rates to pour on crops. But some of the state's historic salmon streams are drying up; under previous congressional mandates, federal and state regulators want to divert some of this water to restore salmon runs.

But, under "takings" legislation passed by the House last month, corporate farmers would have to be compensated for any diversion of their allotments. In fact, under some circumstances, the corporate farmers could claim reimbursement at market rates—meaning reimbursement out of the federal treasury at rates 10 times the subsidized rate they now pay. "We have a right to that water, and if the government wants it for fish, they have to pay us," says Jason Peltier, a top California farm lobbyist.

Until now, federal courts and the U.S. Supreme Court have, in a number of decisions, rejected this view. But the breadth and wording of the new Republican takings proposals would unquestionably give Central Valley farmers a potent new weapon; they are already preparing lawsuits in anticipation of passage of a generous takings law.

#### BLESSING OR DISASTER?

Environmentalists are naturally alarmed. Says Hal Candee, an environmental lawyer with the Nature Resources Defense Council: "This is insane—the public is already subsidizing irrigation that is devastating the environment, and now we have to pay even more to make it stop?"

Moreover, the takings movement is being watched with growing concern by numerous state and local governments, which fear a huge hit on the public treasury—or a sharp decline in their ability to enforce what they consider reasonable environmental, planning and other regulations. In Riverdale, Calif., a fast-growing Southern California city bedeviled by numerous endangered species, traffic and open-space conflicts, city planner Stephen Whyld calls the new takings proposals "prescriptions for total gridlock."

Nonsense, say proponents, who argue that such legislation is necessary to rein in overweening regulators. "It's obvious that bureaucracies from the federal level down to the local school board have come to believe that the Fifth Amendment just doesn't apply to them," says R.S. Radford, a property-law expert at the Pacific Legal Foundation, a conservative legal think tank that has handled many takings lawsuits on behalf of landowners. The takings movement, he says, confronts "terrible abuses by government against individuals." Central Valley farmers, for example, have long painted efforts to save salmon as an example of government "worrying more about fish than people."

What is certain is that the takings campaign, both in Congress and in a number of states, seeks to significantly expand interpretation of the Constitution's so-called takings clause. This is a snippet of the Fifth Amendment that holds that government "shall not take private property for public use without just compensation."

#### KEEPING A PROMISE

The recent House proposal also fulfills a promise in the "Contract With America" and is strongly supported by large industries such as mining, ranching, oil and agriculture. It requires the government to pay landowners full compensation when certain government actions to protect the environment trim the value of any portion of their property by 20% or more. The Senate is considering a proposal championed by presidential hopeful and Senate Majority Leader Robert Dole that lifts that threshold to 33%—but it would apply to all federal regulations, not just environmental rules.

Whatever its final form, such a bill, if passed, would be a populist rallying point that may be difficult for President Clinton to veto. Even if he does, the movement has plenty of steam at a state and local level. Colorado, Oregon, Texas and other states are considering their own expanded takings bills.

In fact, some private-property interests have already begun to push novel legal theo-

ries under the current state of takings law—theories that they clearly hope will be enshrined under the more expansive Republican bills. Wayne Hage, a Nevada rancher and a leader of the West's private-property movement, alleges in a lawsuit pending in the federal court of appeals in Washington that the government owes him compensation because fish and game agencies don't prevent elk herds from drinking from his streams and munching range on his 7,000-acre spread. That is a taking of his water and grass, he contends.

Mr. Hage also is credited with devising another now-popular theory in the West: that ranchers have what amounts to a private-property right to graze on public range land. Thus, Mr. Hage and several other Western ranchers have sued the U.S. Forest Service and the Bureau of Land Management, claiming that they suffered takings when the agencies tried to restrict grazing on public range, which in many areas has been scalped by years of overgrazing.

In Mr. Hage's case, the Forest Service confiscated some of his cows because he repeatedly defied the agency's orders to stop grazing on public land that federal range experts considered "trampled, compacted, gullied."

For damage from regulators and elk, Mr. Hage seeks compensation of at least \$28.4 million.

#### MOUNTAINS OF CONCERNS

Then there is the case of the Summitville Mine in south-central Colorado. Mining practices there have created a heap of cyanide-laced mine wastes; the Superfund cleanup is expected to cost taxpayers at least \$120 million. The Canadian company that operated the mine for its owners has declared bankruptcy and left the country.

Now, the mine owners, Aztec Minerals Corp., Gray Eagle Mining Corp. and South Mountain Minerals Corp., have sued Colorado's governor and main environmental agencies. Their claim: Because regulators did as the companies wished and permitted mining that earned them substantial profits but polluted their property, their land has been devalued by regulatory action—a taking under the Colorado constitution. The mine owners also say their property values have been hurt because regulators' emergency cleanup of Summitville, undertaken to prevent further poisoning of their land, has closed down mining, possibly for good.

"Let me get this straight: It's a taking when you're allowed to mine, and a taking when you're prevented from mining?" scoffs Roger Flynn, an environmental attorney with the Western Mining Action Project.

Just so, says Tim Gablehouse, the mine owners' attorney: "Government action and inaction have damaged the value of private property, and we have a constitutional right to compensation."

#### INTANGIBLE COSTS

Colorado is one of many states considering local takings legislation modeled on the new congressional proposals, and indeed, it is at the state and local level, where planning commissions make numerous decisions on a daily basis, that such measures could really open the floodgates. For example, local governments often deny permission for landowners to subdivide lots or undertake high-density development, on the theory that approval would aggravate congestion or traffic. Yet such decisions often diminish land values by as much as one-third.

Jennifer Moulton, Denver's planning director, predicts that takings legislation pending in the Colorado state legislature would mean "a nightmare of dueling appraisers and dueling lawyers." The Colorado proposal says that any diminution of property values whatsoever requires compensation but leaves

it to appraisers to determine how much. "Property owners will have their appraisers, and we'll have ours, and we'll all go around and around and around," Ms. Moulton says.

#### TEXAS NOTIONS

Other recent federal takings claims have featured coal companies alleging that they must be compensated because federal law requires them to pay money into a fund for miners stricken with black lung. And a company owned by Texas oil millionaire Clayton Williams has sued Wyoming wildlife agencies over limits and licensing requirements for hunting deer, elk and antelope. Mr. Williams's theory: He owns the wildlife on his 90,000-acre Wyoming hideaway, and state hunting restrictions are a taking of his private wildlife for which he must be compensated. Mr. Williams lost the first legal round in federal court, but he has appealed.

Not all the recent federal cases deal with environmental matters. International House of Pancakes Inc. has claimed that modifications to restaurants required by a 1990 handicap-access law are a taking for which it should be paid.

IHOP made the claim in defense of a lawsuit brought by Theodore Pinnock, a San Diego attorney with cerebral palsy who sued after he allegedly couldn't get his wheelchair through a narrow restroom door and had to crawl into the men's room. Last summer, the U.S. Supreme Court refused to review a lower court decision against IHOP's takings claim. But many lawyers say IHOP probably would have prevailed under some of the new takings theories being pushed in Congress.

It is that kind of scenario that concerns people like Jerold S. Kayden, a Harvard University property-law scholar. In his view, the Republican takings bills would "vastly expand" the opportunities for claiming compensable takings—and would likely trigger a blizzard of such claims that will force a cash-strapped government to choose between enforcing regulations in the public interest or paying huge sums to landowners.

More fundamentally, the new takings proposals mark a drastic departure from how courts and policy makers have historically interpreted the Fifth Amendment's taking clause. In general, courts have allowed the government significant latitude to make regulations impinging upon private property in the interest of protecting public health and safety, building highways, limiting growth and the like, particularly when the regulation didn't wipe out all economic value of the private land.

#### NARROW RULINGS

The Supreme Court twice in recent terms has taken up major takings claims; both times the court ruled narrowly in favor of landowners, strengthening private-property rights without fundamentally altering past property-law concepts. The court is currently hearing another potential landmark private-property case involving how far regulators can go to enforce the federal Endangered Species Act on private land.

Mr. Kayden also posits another question: If property owners are going to be paid by the public when a regulation decreases property values, he asks, why shouldn't they have to repay the public when regulatory action—flood control, for example—enhances property values?

Takings proponents, however, contend that the Republican bills aim merely to put common sense back in government's attitude about private property, and they have their own list of abuses that they believe shows the need for a radical change in the takings law. There is the case of a Washington man who was barred from cutting down a few

trees on his land because a spotted-owl nest had been discovered some five miles away. There is the South Carolina developer whose \$1 million investment in residential property was totally wiped out by subsequent erosion-control rules, even though his lots were a football-field distance away from the beach. There are the various landowners who have been thrown in jail for dumping clean sand on slivers of their property that were classified as wetlands; in some cases, the "wetlands" had been dry for decades.

Backers also accuse their critics of fear-mongering when they suggest the bills invite landowners to raid the environment and the national treasury. Critics "have propounded the myth that private property and environmental protection are inconsistent," says Rep. Lamar Smith, a Texas Republican and a House leader on property rights.

The House takings proposal, for example, wouldn't apply to any activity that runs afoul of state nuisance laws; that, he and other supporters say, will prevent landowners from "getting paid not to pollute."

### CONTRACT WITH AMERICA TAX RELIEF ACT OF 1995

SPEECH OF

**HON. THOMAS M. FOGLIETTA**

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, April 5, 1995*

The House in Committee of the Whole House on the State of the Union had under consideration the bill (H.R. 1215) to amend the Internal Revenue Code of 1986 to strengthen the American family and create jobs:

Mr. FOGLIETTA. Mr. Chairman, I hope kids aren't watching because today, we are ripping apart a great bedtime story—Robin Hood. In the rewrite, Robin has been bought off by rich, fat cat lobbyists. He isn't wearing his tights anymore. Instead, he's wearing an Armani suit and Gucci loafers. This time, Robin's taking the little the poor have left and giving it to the rich.

The facts make this story a horror story. Fifty-four percent of the tax cuts in this Contract On America would go to families with incomes of \$100,000 or more. Thirty-two percent of the tax cuts go to families earning over \$200,000. What's left in the Republican pot for poor and middle-class Americans? A mere 14 percent.

A mere 14 percent of the tax cuts of this Republican plan will benefit the average family struggling to send kids to college, struggling to make a downpayment on a home, struggling to make ends meet.

As an alternative, DICK GEHARDT's tax bill provides families with a way to meet one of their many challenges—providing their children with opportunities for higher education. Importantly, this Democratic alternative targets those American families who need this help the most—families earning \$100,000 or less per year.

There were some well-meaning Members on the other side of the aisle who were trying to do the right thing.

They sought to rid the bill of some of its inherent inequity by delivering the tax cuts only to working families making \$95,000 or less per year. But when they arrived at the Sherwood

Forest on the second floor of this building, they were rolled.

It would be nice if this was just a fairy tale, but it's not. The unfairness and the inequity of this bill are going to fall hardest on people like my constituents. My colleagues, this bill is called the Tax Fairness and Deficit Reduction Act. I cannot think of a worse name for it. It is anything but fair and it makes the deficit grow even larger than the tax cuts of the 1980's. My colleagues, oppose this bill.

IN HONOR OF DR. J. HENRY  
ZANAZALARI, SUPERINTENDENT  
OF THE MIDDLESEX COUNTY VO-  
CATIONAL AND TECHNICAL HIGH  
SCHOOLS AS HE RETIRES

**HON. ROBERT MENENDEZ**

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

*Thursday, April 6, 1995*

Mr. MENENDEZ. Mr. Speaker, I rise today to pay tribute to Dr. J. Henry Zanazalari, Superintendent of the Middlesex County Vocational and Technical High Schools. Dr. Zanazalari, who has dedicated 47 years to educating our youngsters, will be retiring at the end of this school year. I would like to take this opportunity to acknowledge his accomplishments.

Throughout his career, Dr. Zanazalari has been a county and statewide advocate of vocational training. For 24 years, he has served as superintendent of the Middlesex County Vocational and Technical High Schools. Under his leadership, the school district was recognized by the New Jersey Department of Education with the Commissioners Cup Award for 5 of the 7 years it was presented. This award is given to the New Jersey school district which placed the highest percentage of graduates in jobs in the field for which they were trained.

Dr. Zanazalari has also expanded the vocational school program in Middlesex County. He spearheaded the construction of the fifth vocational school in Piscataway, thus increasing the opportunity for hundreds of students on waiting lists. He is also responsible for the construction of additions to the East Brunswick, Piscataway, and Woodbridge campuses, which provided special education vocational training programs for the increased number of students with disabilities. In doing this, Dr. Zanazalari demonstrated that he recognizes that there will be more and more people with disabilities in the workforce in the years to come.

Dr. Zanazalari has received many awards for his work in the field of education. Among them are the Rutgers University Distinguished Service Award, and the National Vocational and Technical Honor Society Honorary Member Award. He was also inducted in the Perth Amboy High School Hall of Fame, and was a member of Phi Beta Kappa and Epsilon Pi Tau and the Phi Delta Kappa Honor Society. He is a member of numerous educational associations, including the American Vocational Association, the New Jersey Association of School Administrators, and the New Jersey Council of Local Administrators and Supervisors of Practical Arts.

On Friday, April 7, Dr. Zanazalari will be honored at a retirement dinner at the Landmark Inn, in Woodbridge, NJ. Please join me in wishing Dr. Zanazalari a happy and healthy retirement. He has set a great example for future generations. I am proud to have him as a constituent.

CENTRAL NEW YORK PEE WEES  
FIRST U.S. TEAM TO BE WORLD  
CHAMPIONS

**HON. JAMES T. WALSH**

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

*Thursday, April 6, 1995*

Mr. WALSH. Mr. Speaker, last year I was as proud as I could be, or thought I could be, of some very special young athletes in my home district, the Syracuse Stars Pee Wee Hockey Team. They had won the U.S.A. Nationals and all of our hometown was awash in publicity and congratulations.

Today I am eager to report that the same team has once again prevailed. They are now the holders of the World Cup of Pee Wee Hockey, having won on February 19 this year the 36th Annual Tournoi De Quebec in Quebec City. The tournament hosted 115 teams from 17 countries. The Stars defeated teams from Russia, Ukraine, Detroit, and Toronto on their way to becoming the first United States team to ever win the World Cup.

To put this tournament in perspective, more than 550 former or present NHL players have participated, including Wayne Gretzky, Brett Hull, and Mario Lemieux.

The players are: Daniel Bequer, goalie, of North Syracuse; Brain Balash, forward, of Auburn; Gary Baronick, forward, of North Syracuse; Drew Bucktooth, forward, of the Onondaga Indian Nation; Tim Connolly, forward, of Baldwinsville; Jeremy Downs, defense, of Syracuse; Joshua Downs, defense, of Syracuse; J.D. Forrest, defense, of Auburn; Todd Jackson, forward, of Cortland; Josh Jordan, forward, of Marathon; Tom LeRoux, forward, of Syracuse; Doug McCormack, forward, of Cortland; Matt Magloine, defense, of North Syracuse; Freddy Meyer, defense, of New Hampshire; Anthony Pace, forward, of Cortland; Steve Pakan, defense, of Syracuse; Mike Saraceni, goalie, of North Syracuse; and Ricky Williams, forward, of McGraw. Head Coach Don Kirnan was assisted by coaches Mike Connolly and John Jackson and manager Chris Kirnan.

Freddy Meyer won the Tournament MVP trophy and Drew Bucktooth won the Grand Finale Game MVP. Tim Connolly was top scorer of the tournament and along with Anthony Pace was named a single-game MVP. Dan Bequer gave up only two goals in the last three games, which proved for some exciting hockey, especially in the Stars' 4-0 final game win over Czechoslovakia.

I ask that my colleagues join me in congratulating these young athletes for their performance, and for bringing home to the United States our first World Cup of Pee Wee Hockey.